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| 09/822,850      | 04/02/2001  | Frank Diesterbeck    | DIESTERBECK=3       | 7182             |

7590

07/22/2003

BROWDY AND NEIMARK, P.L.L.C.  
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| EXAMINER |
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HYLTON, ROBIN ANNETTE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3727

DATE MAILED: 07/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/822,850

Applicant(s)

DIESTERBECK, FRANK

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-13 and 17-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-13 and 17-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 27 January 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Terminal Disclaimer***

1. The terminal disclaimers filed on January 27, 2003 and April 30, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US {Patent Applications 09/822,870 and 09/8522,874 have been reviewed and are accepted. The terminal disclaimers have been recorded.

***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 10,11a, and 25a. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

3. The disclosure is objected to because of the following informalities:
- Reference character "20" referred to as both a "rib" and "web" (in the amendment spanning pages 15 and 16);
  - Reference character 29 referred to as "projections", "segments" and "essentially vertical and essentially horizontal areas of projecting segments"; and
  - In the amendment on page 19', the phrase "are provided on provided on the inside".
- Appropriate correction is required.

***Claim Objections***

4. Claims 23-25 are objected to because of the following informalities:
- In claim 23, line 3 of the last paragraph, "a top edge" should read -- the top edge --;
  - In claim 24, the next to last line should read -- at the level of the projection --;
  - In claim 24, in the last line of the third paragraph, "inward" is misspelled;
  - In claim 25, line 1 of the sixth paragraph, "rib" is misspelled.
- Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. Claims 2-13 and 17-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure, as originally filed, for the sealing region of the sealing web and the at least one radially outward projecting reinforcing rib integrally molded on the container edge can be "at a level or roughly level with the outer reinforcing rib of the container" (i.e., with itself). This is a **new matter** rejection.

6. Claims 2-13 and 17-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Claim 13 depends from a canceled claim.

Claim 22, 23 and 25 each recite the limitation "the outer reinforcing rib of the container" in the last line, next to last line, and the next to last line of the third paragraph, respective. There is insufficient antecedent basis for this limitation in the claims.

In claim 25, it is unclear if the last two paragraphs should be included as a part of the last paragraph of the "or" clauses beginning "the outside of the upper region" or if they refer back to any of the preceding "or" clauses, or if only the last paragraph refers back to any of the "or" clauses. Clarification of the claim language is required.

In claim 25, line 14, it is unclear if the "a sealing region of the sealing web" is in addition to the sealing region previously set forth in lines 5-6 of the claim.

In claim 26, in the first line of the fourth paragraph, it is unclear if the "a sealing region of the sealing web" is in addition to the sealing region previously set forth in lines 5-6 of the claim.

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It is unclear how the sealing region of the sealing web and the reinforcing rib can be "at a level or roughly level with the outer reinforcing rib of the container" when only one reinforcing rib has been set forth in the claims and that reinforcing rib is on the container.

There is text missing in claim 26, line 2 of paragraph 2 after "projecting".

In claims 23 and 26, what is the relationship between the "upper edge region" and "a top edge" of the container?

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

### ***Conclusion***

7. The claims are extremely confusing as written. Although they appear to avoid the art of record, patentability cannot be appreciably determined as written.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit

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account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

10. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-\_\_\_\_\_ on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
July 18, 2003

  
Robin A. Hylton  
Primary Examiner  
GAU 3727